

Remarks

The Office Action mailed July 20, 2007 has been received and reviewed. Claims 4-6, and 14 having been amended, claims 19, 20, 22, and 23 having been withdrawn, without prejudice, the pending claims are claims 1-23. Reconsideration and withdrawal of the rejections are respectfully requested.

Obviousness-Type Double Patenting Rejection

Claims 1-23 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-73 of co-pending U.S. Patent Application No. 10/728,577. Upon an indication of otherwise allowable subject matter and in the event this rejection is maintained, Applicants will provide an appropriate response.

The 35 U.S.C. §112, Second Paragraph, Rejection

The Examiner rejected claims 4-6, 14, and 16 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner alleged that the term "substantially" recited in claims 4-6 is a relative term which renders the claim indefinite. Further, the Examiner alleged that the term is not defined by the claim, and the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not reasonably recognize the scope of the invention.

Although Applicants do not agree with the Examiner, the term "substantially" has been amended solely in the interest to advancing prosecution.

The Examiner alleged that claim 14 recites the limitation "polymer composition" in the first line of the claim, and has insufficient antecedent basis for this limitation.

Claim 14 has been amended to rectify this matter. It is respectfully submitted that claim 14 is now in allowable condition.

Finally, the Examiner alleged that claim 16 (the expressions "compatibilizer," "extruding aid," and "chain transfer agent") does not set forth the metes and bounds of the claim.

Applicants submit that these terms are well known to one skilled in the art and that in view of the examples listed in the Specification at p. 22, lines 1-5, one skilled in the art would understand the meaning of the terms.

Furthermore, these terms have been used extensively in the art. See, for example, US 6,379,791; US 3,997,489; and US 5,804,610. In column 1 of US 6,379,791, beginning on line 57, a compatibilizer is defined as "a material comprising less than about 10 weight percent of at least one phase of a system having two or more phases, that improves the interfacial adhesion between two otherwise immiscible material phases." An extrusion aid, as defined in US 3,997,489, beginning in column 2, line 67 includes hydrocarbon oils or waxes. Lastly, US 5,804,610 defines chain transfer agents in column 8, beginning on line 12 as "materials which regulate free radical polymerization."

The 35 U.S.C. §102 Rejection

The Examiner rejected claims 1-6, 13-18, and 21 under 35 U.S.C. §102(b) as being anticipated by WO 02/066087. This rejection is respectfully traversed.

Claim 1 is the only independent claim. Each of claims 2-6, 13-18, and 21 depends from claim 1 and, therefore, includes all of the features of claim 1. Thus, remarks that refer to claims 1 apply equally to claims 2-6, 13-18, and 21.

Applicants wish to bring to the Examiner's attention that claim 1 recites a nonadherent composition defined in the Specification on p. 3, lines 27-32 as a composition that does not adhere to the wound tissue and so does not cause pain and/or destruction of the wound issue upon removal. The wound dressing disclosed in the instant application is primarily a wound contact material that does not stick to the wound.

In contrast, WO 02/066087 is drawn specifically to an adhesive composition. Although WO 02/066087 does not define "adhesive," it references US 4,367,732 which defines an adhesive as a gum-like bonding composition intended to stick to the skin (p. 16-17); adhere a microcolloid to skin of user (p. 17, paragraph 1).

Nonadherent is not equal to adhesive. Thus, not all features of claim 1 are recited. Moreover, "[I]t is not uncommon that a 'species' may be patentable, that is, satisfy sections 101-103, notwithstanding a prior art 'genus'" (e.g., *In re Ornitz*, 376 F.2d 330, 336, 153 USPQ 453, 458 (CCPA, 1967). Furthermore, "a prior genus which does not explicitly disclose a species does not anticipate a later claim to that species" (e.g., D. Chisum, *Chisum on Patents*, Volume 1, Release No. 94, §3.02[2][b] page 3, line 9 to page 4, line 2). WO 02/066087 does not explicitly disclose species of an absorbent, nonadherent composition and, therefore, cannot anticipate.

Therefore, the Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b).

The 35 U.S.C. §103 Rejection

The Examiner rejected claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over WO 02/066087. This rejection is respectfully traversed.

The Examiner rejected claims 9-11 under 35 U.S.C. §103(a) as being unpatentable over WO 02/066087 in view of the article "SALCARE® SC95" by Ciba®. This rejection is respectfully traversed.

The Examiner rejected claim 12 under 35 U.S.C. §103(a) as being unpatentable over WO 02/066087 in view of U.S. Patent No. 4,902,565. This rejection is respectfully traversed.

Each of claims 7-12 depends from claim 1 and, therefore, contains all of the features recited in claim 1.

M.P.E.P. §706.02(j) states, "To establish a *prima facie* case of obviousness, three basic

criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure" (emphasis added).

As noted in the immediately preceding section, WO 02/066087 discloses no teaching or suggestion of a nonadherent composition. Nothing in any of the cited documents cures the deficiencies of WO 02/066087. Thus, none of the cited combinations of documents teaches or suggests all of the features recited in Applicants' claims.

Additionally, none of the combinations of cited documents provides one skilled in the art with a reasonable expectation of success forming an absorbent, nonadherent polymer composition. Although it may be obvious to create a "medical article comprising an adhesive composition comprising a hydrophobic polymeric matrix and absorbent particles of acrylic acid polymers" as the Examiner has alleged, it is not obvious how such a combination would provide a nonadherent composition. Furthermore, WO 02/066087 does not disclose any teaching or suggestion of how to modify the claimed composition to be nonadherent. Thus, WO 02/066087, alone or in combination with any of the other cited documents, fails to provides a reasonable expectation of success forming an absorbent, nonadherent polymer composition.

It is respectfully submitted that WO 02/066087, alone or in combination with the cited documents, fails to establish a *prima facie* case of obviousness for any of claims 7-12. Accordingly, the rejection of claims 7-12 under 35 U.S.C. §103(a) as being obvious in view of WO 02/066087 with the article "SALCARE® SC95" by Ciba® and U.S. Patent No. 4,902,565 as being incorporated into the disclosure of WO 02/066087 must fail. Reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) is respectfully requested.

Amendment and Response

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For: WOUND DRESSINGS AND METHODS

Summary

It is respectfully submitted that the pending claims 1-23 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

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CERTIFICATE UNDER 37 CFR §1.10:

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